

ALB:JMH
F. #2016R01716

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

16 938 MJ

- - - - -X

UNITED STATES OF AMERICA

COMPLAINT

- against -

(18 U.S.C. § 2252(a)(1))

FRANK SAPPELL,

Defendant.

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

DEBRA GERBASI, being duly sworn, deposes and states that she is a Special Agent with the United States Department of Homeland Security, Homeland Security Investigations, duly appointed according to law and acting as such.

In or about and between December 2015 and August 11, 2016, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant FRANK SAPPELL did knowingly and intentionally transport and ship, using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce, one or more visual depictions of minors engaged in sexually explicit conduct, the production of such visual depictions having involved the use of minors engaging in sexually explicit conduct, and such visual depictions were of such conduct.

(Title 18, United States Code, Section 2252(a)(1))

The source of your deponent's information and the grounds for her belief are as follows:¹

1. I have been employed as a Special Agent with the Department of Homeland Security, Homeland Security Investigations ("HSI"), since 2002. I have gained expertise in the conduct of child pornography and exploitation investigations through training in seminars, classes, and work related to conducting these types of investigations, including the execution of multiple search warrants relating to child pornography offenses and the subsequent prosecution of offenders. In addition, I have consulted with other experienced child pornography and exploitation investigators.

2. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the investigative file; my training and experience; and from reports of and discussions with other law enforcement officers involved in the investigation. Statements attributable to individuals herein are set forth in sum and substance and in part.

The Initial Investigation

3. Beginning on or about December 10, 2015, using peer-to-peer ("P2P")² software developed for law enforcement use which accesses information available to the

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

² P2P file sharing allows people using P2P software to download and share files with other P2P users using the same or compatible P2P software. P2P software is readily available on the Internet and often free to download. Internet connected devices such as computers, tablets and smartphones running P2P software form a P2P network that allows users on the network to share digital files.

public which accesses a publicly-available P2P Internet network, I along with other HSI agents on Long Island sought to identify Internet users on Long Island actively sharing child pornography.

4. On or about and between December 10, 2015, and July 16, 2016, using the above-referenced software, law enforcement downloaded hundreds of files previously identified as being of investigative interest to child pornography investigations on approximately thirty (30) separate occasions from one or more devices at the IP address³ 24.184.103.46. Those files which I reviewed include both still images and videos, and include both child erotica and child pornography. Three of the child pornography files downloaded from IP address 24.184.103.46, which are available for the Court's review, are described as follows:

a. On or about December 11, 2015, law enforcement downloaded a series of 60 videos, including a file title 6살 유치원생 제대로 삽입 사정 강간.avi, with an infohash value⁴ of a908bae7f3d8e0f6e42a48bda0eba0a172365b7c, which depicts a pre-pubescent toddler approximately 2-4 years old engaged in sexual explicit activity with an adult male.

³ An Internet Protocol Address or "IP Address" refers to a unique number used by a computer to access the Internet.

⁴ "Hash value" refers to a mathematical algorithm generated against data to produce a numeric value that is representative of that data. A hash value may be run on media to find the precise data from which the value was generated. An "infohash value" is a SHA-1 hash value of the set of data describing the file(s) referenced in the Torrent. This set of data contains the SHA-1 hash value of each file piece in the Torrent, the file size(s), and the file name(s). This "infohash" uniquely identifies the Torrent file on the BitTorrent network.

b. On or about December 19, 2015, law enforcement downloaded a file titled “!New! (Pthc) 2007 8 Yo Girl Jenny Sucks Dog Dick.mpg,” with an infohash value of b72d56aaeb90726b020cdbcb83db0a52a90ebdba5, which video depicts a young girl, approximately 8-11 years of age performing oral sexual explicit activity on a dog.

c. On or about February 8, 2016, law enforcement downloaded a series of 103 still images, including a file titled “4.jpg” with an infohash value of af38e645faa9272bece2997cb3f76c30e48066da, which depicts images of a pre-pubescent female approximately 9-11 years of age posing with her genitalia exposed.

5. Law enforcement obtained cable subscriber records reflecting that the IP address 24.148.103.46, for each of the dates described above, was assigned to the account of the defendant, FRANK SAPPELL, at his residence in Greenvale, New York (“the Residence”). Based on a check of law enforcement databases and public records, the defendant moved to the Residence in or around July 2015.

The Search Warrant

6. On or about August 8, 2016, and based in part upon the foregoing, law enforcement obtained a search warrant from the Honorable Anne Y. Shields, United States Magistrate Judge for the Eastern District of New York, under docket number 16-MJ-729, authorizing a search of the Residence (“the Search Warrant”).⁵

⁵ The Search Warrant stated that the series referred to in paragraph 4(c), above, was downloaded on or about February 8, 2015, due to a typographical error.

The Execution of the Search Warrant

7. On or about August 11, 2016, I, along with other law enforcement officers, executed the Search Warrant at the Residence. SAPPELL was present. SAPPELL was advised of his Miranda rights in writing and orally. SAPPELL signed a written waiver of rights form and stated that he understood his rights.

8. In sum and substance and in part, SAPPELL stated that he downloaded child pornography onto his desktop computer. SAPPELL further stated that he defined child pornography as that involving someone not able to make their own choices or not able to consent.

9. During the course of the execution of the Search Warrant, law enforcement seized one desktop computer, two laptop computers, and two external hard drives. One of the hard drives was a Western Digital model, with a serial number WNQ253000332. A subsequent forensic examination of this device identified the following child pornography files, which are available for the Court's review, among others:

a. A video file titled "New PTHC OPVA 2014 REAL FATHER FUCK HIS 13 YO DAUGHTER IN THE BASEMENT.mpg," which video depicts a prepubescent female performing oral sexual explicit activity on an adult male, followed by sexual intercourse between the two. The forensic examination further revealed that this file had been modified as recently as February 8, 2016.

b. A video file titled R@ygold - VA LADA 7yo(fullmovie).avi, which video depicts a prepubescent female lying on the floor with her arms and legs tied

apart, and several sexual explicit acts involving the female and an adult male. The forensic examination further revealed that this file had been modified as recently as December 7, 2015.

c. A video file titled "12 Yo Isabel.mpg," which video depicts a female of approximately 12 to 14 years of age being tied up and forced to engage in sexually explicit activity. The forensic examination further revealed that this file had been modified as recently as June 16, 2016.

d. A photograph titled "2011 PTHC Falko AWESOME 7 yo and 8 yo Child Porn (94)[3238483].JPG," which photograph depicts an adult male engaging in sexual intercourse with a prepubescent female. The forensic examination further revealed that this file had been modified as recently as September 22, 2011.

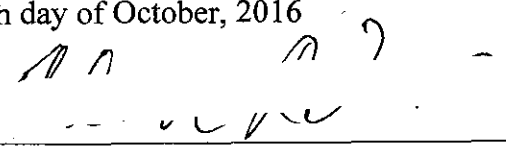
WHEREFORE, your deponent respectfully requests that the defendant FRANK SAPPELL be dealt with according to law.



DEBRA GERBASI

Special Agent, United States Department of
Homeland Security, Homeland Security
Investigations

Sworn to before me this
20th day of October, 2016



THE HONORABLE ARLENE R. LINDSAY
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK